IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.99 OF 2007

WITH

CIVIL APPLICATION NO.944 OF 2007

In

SECOND APPEAL NO.99 OF 2007

Udhav Balkrishna Dikshit,
since deceased through his heirs and
legal representatives:
1A. Mr.Jayant Udhav Dikshit
(wrongly named as Jaywant Udhav
Dikshit) & Ors. : Appellants
(Orig.Plaintiff)

V/s.

Shri Vasudeo Gopal Chothe & Ors. : Respondents
(Orig.Defendants)

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Mr.Dilip Bodake for the appellants.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 30, 2007.

P.C.

1. This is an appeal by the plaintiff whose suit has been decreed by the trial Court and the appellate Court

dismissed it. The appellant sued the respondents for a declaration of ownership and injunction in respect of a portion of land. According to the appellant, the name of the plaintiff and the defendant nos.2 to 4 were appearing in the extract of the property which shows they are encroachers. The defendant no.1 purchased 4 1/4 gunthas out of RS no.443/9 and 2 gunthas out of RS no.443/10 under a registered sale deed. He has thereafter got a larger area registered in his name in the City Survey and that constitutes an encroachment. The appellate Court has considered the evidence in the case and has come to the conclusion that there is no encroachment. The appellate Court referred to a map prepared by the DILR when the land was converted into non-agricultural use before it was purchased by the defendants. The map shows that there is a road between gat nos.1 & 2 purchased by the defendants. The sale deeds mention the area of the plot only. The appellate Court came to the conclusion that conversion was at the instance of the plaintiff's predecessor in interest and the map was also prepared at his instance. Therefore, the appellate Court came to the conclusion that there is no encroachment of the additional area shown in the map. The learned appellate Court has relied on exh.162, which is a map prepared by the Competent Authority.

2. Mr.Bodake, the learned counsel for the appellants,

contended that the appellate Court could not have relied on the revenue entries to hold that there is no encroachment. It is true that revenue entries cannot confer title. However, the revenue entries can certainly be relied upon for determining what is the area in possession of a party and whether that area is in possession as a result of encroachment or otherwise. Here, in this case, in addition to the entries, there is a reliance of the map also. The finding of fact that there is no encroachment has been arrived at on the basis of cogent evidence on record.

3. This Second Appeal does not raise any substantial question of law and is hereby dismissed.

4. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same stands disposed of.

S.A. BOBDE, J.